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SUPREME COURT, U.S.

No. 74-1589

IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

GENERAL ELECTRIC COMPANY,

Petitioner,

v.

MARTHA V. GILBERT, INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS, AFL-CIO-CLC, *et al.*

MARTHA V. GILBERT, INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS, AFL-CIO-CLC, *et al.*,

Petitioners,

v.

GENERAL ELECTRIC COMPANY

JOINT PETITION OF ALL PARTIES FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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Pursuant to Rule 20 of the Rules of this Court, Petitioners[1] pray that a writ of certiorari issue in advance of the judgment of the Court of Appeals for the

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[1] All parties to the suit in the court below join in petitioning for a writ of certiorari. In the event that certiorari is granted, the parties have agreed that, subject to the approval of this Court, General Electric Company shall be treated as petitioner with re-

Fourth Circuit to review a case pending in the latter court following a decision by the United States District Court for the Eastern District of Virginia.

An appeal to the Fourth Circuit from the district court's decision was perfected in May 1974 (*Martha V. Gilbert, et al., Appellees,* v. *General Electric Company, Appellant,* No. 74-1557, Fourth Circuit). On January 8, 1975, the case was argued before a panel of the court of appeals. However, on June 9, 1975, the court of appeals entered an order (App. A, *infra,* p. 1a) announcing that its decision in the case would be delayed pending this Court's decision in *Wetzel* v. *Liberty Mutual Insurance Company,* No. 74-1245, certiorari granted May 27, 1975.

OPINIONS BELOW

The opinion of the district court (App. B, *infra,* pp. 2a-38a) was entered on April 13, 1974, and is reported at 375 F. Supp. 367. Earlier district court opinions with respect to procedural aspects of the case are reported at 347 F. Supp. 1058 (1972), at 59 F.R.D. 267 (1973), and at 59 F.R.D. 273 (1973).

JURISDICTION

The judgment of the district court (App. C, *infra,* p. 46a), entered on April 13, 1974, was stayed in part by an order (App. E, *infra,* p. 50a) entered on May 8, 1974. On May 9, 1974, petitioner General Electric

spect to the briefing and oral argument in this Court as it was the moving party in the court below.

The parties are also prepared, if certiorari is granted, to follow whatever reasonably accelerated briefing schedule the Court may deem appropriate in order not to delay the Court's action in the pending *Wetzel* v. *Liberty Mutual Insurance Company,* No. 74-1245.

Company ("GE") filed a notice of appeal, and on May 15, 1974, the certified record from the district court was filed in the Court of Appeals for the Fourth Circuit. As stated, the court of appeals has not acted on GE's appeal. Jurisdiction of this Court is invoked under 28 U.S.C. 1254(1), which provides for Supreme Court review of cases in the courts of appeals by writ of certiorari granted upon the petition of any party before or after rendition of judgment.

QUESTION PRESENTED

The question presented[2] is whether an employer's exclusion of coverage for pregnancy-related disabilities from an employee disability income protection plan

[2] The subsidiary and related questions listed below were presented to the court of appeals. Question No. 1 is urged by the petitioner GE, and Questions Nos. 2-5 are urged by petitioners Gilbert, et al., as important and appropriate for decision by this Court in connection with the principal Question Presented. If certiorari is granted as to the principal question, but is denied as to any of the following questions, petitioners respectfully request that subsequent to decision by this Court, the case be remanded to the court of appeals for decision of such questions to the extent that they may remain relevant:

Questions urged by petitioner GE—

1. Whether the district court erred when:

a. In defining the plaintiff classes on whose behalf the action could be maintained, it included females not employed in the same plant as the representative plaintiffs and/or who are not represented for purposes of collective bargaining by the same international union and/or the latter union's affiliated locals.

(b) It directed that a Rule 23(c)(2) Legal Notice concerning the pendency of the action be posted in plants and facilities of GE, rather than requiring that individual notice be given to members of the plaintiff class. (Petitioners Gilbert, et al., do not believe that Question No. 1(b) is presented since the

constitutes sex discrimination proscribed by Title VII of the Civil Rights Act of 1964.

STATUTE INVOLVED

The relevant provisions of Section 703 of Title VII of the Civil Rights Act of 1964, (42 U.S.C. § 2000e-2) are as follows:

> (a) It shall be an unlawful employment practice for an employer—
>
> (1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect

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district court certified the class under Rule 23(b) (1) and (2), F.R. Civ. P. Order of April 30, 1973).

Questions urged by petitioners Gilbert, et al.—

2. Where a discriminatory attitude by GE toward its female employees was a motivating factor in its exclusion of pregnancy-related disabilities from the coverage of its disability income protection plan, does such exclusion constitute sex discrimination proscribed by Title VII of the Civil Rights Act of 1964? (Petitioner GE disputes the predicates upon which this question is based, contending that a discriminatory attitude by GE toward its female employees neither existed nor was a motivating factor for GE's exclusion of pregnancy from coverage under its sickness and accident insurance See note 3, *infra*.).

3. Whether the district court improperly considered GE's defense of cost where GE did not plead business necessity as a defense.

4. Whether the district court erred in refusing to consider evidence of GE's discrimination in employment because of sex prior to 1964.

5. Whether the district court erred in receiving in evidence GE's Exhibit 12 which purported to be two letters written by the General Counsel of the EEOC dated respectively November 10 and 15, 1966, which were dates subsequent to his resignation and departure from EEOC, and which were never signed nor sent nor otherwise identified.

> to his compensation, terms, conditions, or privileges of employment, because of such individual's . . . sex. . . .
>
> * * * *
>
> (e) Notwithstanding any other provision of this subchapter, (1) it shall not be an unlawful employment practice for an employer to hire and employ employees . . . on the basis of [their] sex . . . in those certain instances where . . . sex . . . is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise. . . .

STATEMENT OF THE CASE

This suit was filed in the district court by various present or former female employees of GE who had been absent from work because of pregnancy-related disabilities, on behalf of themselves and all similarly situated employees, and by the International Union of Electrical, Radio and Machine Workers, AFL-CIO-CLC ("the IUE"), and its Local 161. The IUE is the bargaining representative of employees at certain GE plants (App. B, *infra*, p. 2a). The complaint alleged that GE discriminated against its female employees because of sex in violation of Title VII of the Civil Rights Act of 1964 by failing to pay them any sickness and accident benefits when absent from work because disabled by pregnancy, although such benefits are paid in the case of all other absences due to a disability (App. B, *infra*, pp. 2a-5a).

Several of the individual plaintiffs had filed appropriate charges with the EEOC, and had received notices from the EEOC authorizing the institution of

the suit (App. B, *infra,* p. 3a, 27a-28a.) While the suit was pending, the EEOC issued a decision that GE's sickness and accident benefit plan violated Title VII (App. D, *infra,* pp. 47a-49a).

The district court determined that the suit could be maintained as a class suit under Rule 23(b)(1) and (2), F.R. Civ.P., on behalf of all GE female employees, whether represented by the plaintiff unions, by other unions, or whether unrepresented (App. B, *infra,* p. 4a).

Preceding the trial in the district court, relevant facts were developed by interrogatories and answers thereto, pre-trial stipulations of facts, and the deposition of a medical expert (App. B, *infra,* pp. 5a-15a, 19a).

The case was tried before the district court on July 24, 25, and 26, 1973. Witnesses testified as to the plaintiffs' efforts to secure sickness and accident disability benefits for pregnancy-related disabilities (App. B, *infra,* p. 4a). GE's labor relations counsel testified as to the business considerations upon which GE based its policy of excluding pregnancy-related disabilities from coverage under GE's income protection plan (App. B, *infra,* pp. 23a-24a). Expert testimony and evidence was also received from physicians, actuaries, and a present and a former government official (App. B. *infra,* pp. 15a-19a, 21a-23a, fn.7, 24a).

The district court thereafter rendered an opinion, including extensive findings of fact and conclusions of law, in which the court found that GE's failure to pay sickness and accident benefits for pregnancy-related disabilities violated Title VII (App. B, *infra,*

pp. 15a-38a).[3] The district court entered an order, *inter alia,* enjoining GE from discriminating against its female employees by failing to pay weekly disability benefits for absences from work due to pregnancy-related disabilities, and stating that monetary judgments, in amounts to be determined by the court, would be entered in favor of the affected female employees (App. C, *infra,* p. 46a). On May 9, 1974, the district court entered an order (App. E, *infra,* p. 50a) staying enforcement of its injunction against GE pending a ruling by the court of appeals in the case.

REASONS FOR GRANTING THE WRIT

This case presents the same question as is now before the Court in *Wetzel* v. *Liberty Mutual Insurance Co.,* No. 74-1245, certiorari granted May 27, 1975. The *Wetzel* case was decided in the district court on a motion for summary judgment, with a limited record,[4]

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[3] Petitioners Gilbert, et al., read the district court decision as including a finding that GE maintained a discriminatory attitude toward its female employees, and that such attitude was a motivating factor in GE's failure to pay sickness and accident benefits for pregnancy-related disabilities. See App. B, *infra,* p. 32a. Petitioner GE does not so read the district court's decision, see App. B, *infra,* pp. 29a, 37a, and GE contended in the court of appeals that such a reading not only distorts the language of the district court's decision but unfairly extends the decision's scope.

[4] In the *Wetzel* case, the district court thus commented on the record before it (372 F. Supp. at 1164):

> The remainder of Defendant's [the Company's] motion continues the argument that it is impossible for Defendant to present any statistical material of the cost of extending disability benefits to pregnancy because no statistics are available. Whether such statistics are available or not, the *Defendant made no attempt to produce any such evidence before this Court* . . . .
>
> Finally, the Defendant argues that "because employees can, in some situations, make as much or more money by receiving

and without prior ruling by the EEOC on the validity of the Liberty Mutual plan. We believe that this Court in deciding a question of as great importance as that presented in *Wetzel* will find it helpful to have before it the record in the instant case.

The petitioners by interrogatories and answers thereto, by the testimony of expert medical and actuarial witnesses, and a present and a former government official, and by statistical and other exhibits developed a complete record. The record in this case thus contains evidence with respect to each of the following matters:[5]

1. The types of medical problems presented by pregnancy and childbirth as compared with other disabling conditions.

2. The extent to which the reliability and availability of birth control and abortion place pregnancy and childbirth in the category of voluntarily incurred risks.

3. The likelihood of abuse through malingering or otherwise if sickness and accident benefits are available for pregnancy-related disabilities.

4. The practices of industry and government with respect to employment of women who are pregnant and their employment subsequent to childbirth.

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disability income it can be assumed that females on pregnancy leave of absence will remain at home longer than normal." *The Defendant presented absolutely no evidence to support this argument* . . . [emphasis added].

By contrast, the record in this case contains evidence with respect to these matters.

[5] Petitioners Gilbert, et al., do not agree that each of the listed categories of evidence is relevant.

5. The insurance industry practice and experience with respect to employee sickness and accident insurance coverage in the United States, including statistics regarding the extent of the coverage of pregnancy-related disabilities under the plans, and the length of the benefit periods provided for both maternity and non-maternity disabilities.

6. The duration of employee absences from work because of pregnancy-related and other disabilities, and the duration of maternity and other claims made under employee sickness and accident insurance plans.

7. The relative percentages of employees returning to work after having babies, and of those who recover from non-pregnancy-related disabilities.

8. Cost figures relative to employee sickness and accident insurance coverage for pregnancy-related disabilities.

9. Business considerations, such as relative cost factors, and employee return rates after pregnancy and delivery, upon which some employers rely in excluding pregnancy-related disabilities from coverage under employee sickness and accident insurance plans.

10. The incidence of pregnancy and the effect of lack of income or low income on the outcome of pregnancy.

11. The history and development of EEOC policy and guidelines with respect to pregnancy-related disabilities, with specific testimony by the General Counsel of the EEOC during a period in 1965 and 1966.

That certiorari was granted in the *Wetzel* case evidences the importance of the question presented there and in this case. The principle is established, more-

over, that certiorari to review a district court's judgment before decision by a court of appeals is appropriate in cases where there is pending in this Court another case, or other cases, presenting the identical issue. For example, *McElroy* v. *United States ex rel. Guagliardo,* 361 U.S. 281, 283 (1960); *Reid* v. *Covert,* 354 U.S. 1, 5 (1957); *United States* v. *Thomas,* 361 U.S. 950, 951 (1960). See also *Brown* v. *Board of Education,* 344 U.S. 1, 3 (1952); *Bolling* v. *Sharpe,* 344 U.S. 873 (1952). From a review of the reported cases, it cannot be ascertained whether the completeness of the records in the cases brought up after an earlier grant was a factor in the Court's subsequent grants of certiorari. Where, as here, there is a record of such completeness in a case pending in the court of appeals that it is likely to prove helpful to the Court in deciding a case already before it which presents the identical question, there is further good reason for the grant of certiorari.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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June 17, 1975

APPENDIX

APPENDIX A

Order

(Filed June 9, 1975)

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

74-1557

MARTHA V. GILBERT, *et al.*, *Appellees.*

v.

GENERAL ELECTRIC COMPANY, *Appellant.*

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA, AT RICHMOND

FOR REASONS APPEARING to the court,

IT IS ORDERED that the decision in this case is delayed pending the decision of the United States Supreme Court in Wetzel v. Liberty Mutual Insurance Company.

For the Court-by Direction

/s/ WILLIAM K. SLATE, II
William K. Slate, II
Clerk

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DIVISION OF VIRGINIA, RICHMOND DIVISION

MARTHA V. GILBERT, *et al*

v.

GENERAL ELECTRIC COMPANY

Civil Action No. 142-72-R

Memorandum

(Filed April 13, 1974)

Plaintiff female employees of defendant General Electric Company (G.E.), which is an employer within the meaning of the appropriate section of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e(b), seek class relief from alleged sex employment discrimination practices by that company in violation of Title VII of the Civil Rights Act of 1964; 42 U.S.C. § 2000e, Plaintiff International Union of Electrical Radio and Machine Workers, AFL-CIO-CLC, is the recognized bargaining representative of a national collective bargaining unit composed of employees of defendant at plants throughout the United States. Included in said unit at various of the plants are a number of the named plaintiffs. Plaintiff, Local 161, is an affiliate of the International, concerned primarily with defendant's Salem, Virginia plant. Other groups or units of employees at defendant's plants and locations have designated other labor organizations, not parties hereto, as their exclusive representatives.

G.E., however, pursued a policy of negotiating a uniform health insurance benefits contract which applies equally to all unionized and non-unionized employees. The bargaining is conducted on behalf of the participating unions by a steering committee which includes plaintiff union. Representations which are uncontradicted were made to the Court

that all but 50 unionized employees are represented in the health plan negotiations by the plaintiff International (IUE) or some other member of the steering committee. The steering committee unanimously adopted a proposal under date of January 15, 1973, which promulgates the position espoused by the plaintiff union, hence the Court found it unnecessary to order joinder of the nonparty unions. See Memorandum of May 16, 1973.

Jurisdiction is invoked pursuant to 42 U.S.C. § 2000e-5 (f)(3). The employment practice complained of is G.E.'s denial of sickness and disability benefits to employees absent because of pregnancy.

The numerous pleadings, voluminous records and endless motions belie the underlying simplicity with which the issues herein may be stated. For these purposes it suffices to note that prior to hearing of this matter, the bulk of this litigation has been concerned with procedural questions of an often difficult nature, including venue, see 347 F. Supp. 1058 (Sept. 25, 1972); compliance with EEOC procedures, see memorandum of February 2, 1973; class determination and counter-claim, see F. Supp. (Apr. 30, 1973); and compulsory joinder, see memorandum of May 16, 1973, *supra*.

Once having traversed the thicket of procedural complexities, the issues presented are not difficult. Briefly stated, G.E. provides weekly non-occupational sickness and accident benefit payments (hereinafter "S & A") to all its employees in an amount equal to 60 percent of an employee's straight time weekly wage up to a maximum benefit of $150 per week for each week the employee is absent from and unable to work on account of any disability resulting from a non-occupational accident or sickness for a period up to and including 26 weeks for any one continuous period of disability or successive period of disability due to the same or related cause. Said coverage applies with one exception; sickness or other disabilities arising

from pregnancy, miscarriage or childbirth are not included.[1]

Each of the original named plaintiffs was a G.E. employee who became pregnant during 1971. Each made claims for S & A benefits and was denied same. Several of the plaintiffs filed charges with the Equal Employment Opportunities Commission and, upon waiting the requisite period, brought this suit with their local and national unions, which are co-plaintiffs. Pursuant to the Court's order of April 30, 1973, the original named personal plaintiffs were declared representatives of two classes:

I. With respect to declaratory relief concerning the issue of whether G.E.'s refusal to pay S & A benefits to pregnancy related cases is violative of law, said named plaintiffs represent a class of all females who are now or have been employed by G.E. on or after September 14, 1971, or who become so employed during the pendency of this action and also all female employees who became pregnant and were denied S & A benefits or will be denied S & A benefits therefore from September 14, 1971. This class numbers approximately 100,000 women at hundreds of G.E. plant locations nationally.

II. With respect to damages for those women actually denied benefits from September 14, 1971, the named plaintiffs represent all such women in this sub-class. The number of women in this class is uncertain at this stage, although during 1971 G.E. Received over 5,500 claims for maternity expenses * from women absent because of preg-

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[1] Though not raised by the complaint, plaintiffs also challenge defendant's long term disability programs which exclude maternity benefits as well. The legal and factual issues being identical, the Court will deal primarily with the sickness and accident coverage, except where otherwise noted.

* By order of the court filed April 19, 1974 the phrase "S & A benefits" which appeared at this place in the memorandum opinion as filed on April 13, 1974, was deleted and the words "maternity expenses" substituted therefor.

nancy. [Interrogatory # 36] Pursuant to the Court's order of May 14, 1973, members of both the class and sub-class were given notice of the pendency of this action. FRCP 23 (e)(2) No request for exclusion as a class member was received by the Court.

The gravamen of plaintiffs' legal claim is that the challenged S & A policy is violative of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, and EEOC guidelines issued thereunder by virtue of constituting illegal sex discrimination.[1a] In support of this claim, plaintiffs assert factually that there is no medical, economic or sociological basis for distinguishing pregnancy disabilities from other types of disabilities covered by G.E.'s S & A program. Defendants, in brief, argue that pregnancy may be distinguished on several accounts and that said distinctions justify G.E.'s S & A policy under Title VII.

I. Stipulated Facts

Counsel have entered into a lengthy stipulation of facts which, in pertinent part, reads as follows:

• • •

1. The plaintiff International Union of Electrical, Radio and Machine Workers (AFL-CIO hereinafter called International Union, and the defendant General Electric Company, hereinafter called GE, on February 4, 1971, entered into a 1970 Settlement Agreement, a copy of which is attached hereto marked as Exhibit A, which by its terms was effective until May 26, 1973.

[1a] Title VII of the Civil Rights Act of 1964, 42 U.S.C.A. § 2000e-2(a):

"It shall be unlawful employment practice for an employer—(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex or national origin; . . ."

2. Part three of said 1970 Settlement Agreement is the 1970-1973 GE-IUE National Agreement, a copy of which is attached hereto marked Exhibit B. The foregoing 1970 Settlement Agreement has been recognized by International Union and GE as applicable to all the plants and classifications listed on pages 1 to 5, inclusive of the 1970-1973 GE-IUE (AFL-CIO) National Agreement, and also to certain additional plants and classifications for which the International Union has been certified subsequent to February 4, 1970.

3. At all times since January 26, 1970, pursuant to the 1970 Settlement Agreement and particularly to the provisions of the 1970-GE-IUE Pension and Insurance Agreement, GE has provided and does now provide non-occupational sickness and accident benefit payments to all of its employees represented by the plaintiff International Union and its affiliated IUE locals in an amount equal to 60 percent of an employee's normal straight time weekly earnings up to a maximum benefit of $150 for each week he or she is totally disabled as a result of a non-occupational accident or sickness for a period up to and including 26 weeks for any one continuous period of disability or successive periods of disability due to the same or related cause, excepting therefrom absences due to pregnancy or resulting childbirth or to complications in connection therewith. The full terms and conditions governing the payment by defendant GE to such employees of weekly non-occupational sickness and accident benefits and medical expense benefits at all times since January 26, 1970, are set forth in the General Electric Insurance Plan with comprehensive Medical Expense Benefits, as amended January 26, 1970 (ERB 32D), a copy of which is attached hereto as Exhibit C.

• • •

5. At all times since January 1, 1970, pursuant to the 1970 Settlement Agreement, GE has maintained for hourly employees represented by the plaintiff International Union and its affiliated IUE locals the General Electric Long Term Disability Insurance Plan for Hourly Employees effective January 1, 1970 (ERB 135), a copy of which is attached hereto as Exhibit E.

6. At all times since January 1, 1970, pursuant to the 1970 Settlement Agreement, GE has maintained for salaried employees represented by the plaintiff International Union and its affiliated IUE local unions the General Electric Long Term Disability Income Plan for Salaried Employees, as amended January 1, 1970, a copy of which is attached hereto as Exhibit F.

7. At all times since January 26, 1970, pursuant to the 1970 Settlement Agreement, GE has maintained for the employees represented by the plaintiff International Union and its affiliated locals the General Electric Pension Plan, as amended January 1, 1970 (ERB-42E), a copy of which is attached hereto as Exhibit G.

8. At all times since January 1, 1970, GE has maintained for pensioners who retired from employment in which they were represented by plaintiff International Union and its affiliated IUE locals, the medical care plan for pensioners which is set forth in the aforesaid 1970 GE Insurance Plan with Combined Medical Expense Benefits (ERB 32D) . . . copy of a booklet entitled "General Electric Medical Care Plan for Pensioners" (ERB-107C), in which there is reproduced the medical care plan for pensioners set forth in such General Electric Insurance Plan.

9. At all times since January 1, 1971, pursuant to the 1970 Settlement Agreement, GE has maintained for all employees represented by the plaintiff International Union and its affiliated IUE locals the Individual Development Program, effective January 1, 1971 (ERB-161), a copy of which is attached hereto marked as Exhibit I.

10. The General Electric Insurance Plan with Comprehensive Medical Expense Benefits as amended July 26, 1970 (ERB-32D), a copy of which is attached hereto as Exhibit C, is made applicable to GE employees who are not represented by the plaintiff International Union and its affiliated IUE locals. As to those GE employees represented by unions other than plaintiff International Union and its affiliated IUE locals, the Plan is made applicable pursuant to collective bargaining agreements between GE and such unions.

11. At all times since October 3, 1966, and at the present time GE has been and is primarily responsible for the payment to its employees of the weekly sickness and accident benefits specified in the General Electric Insurance Plan then and now operative and was and is in effect a self-insurer. With respect to coverage outside of California during this period, GE has obtained an insurance policy covering weekly sickness and accident benefits, among others, whereunder a tentative initial premium was paid to Metropolitan Life Insurance Company (hereinafter "Metropolitan Life") subject to later adjustment in the light of actual experience. In California GE has made no arrangements with any insurance carrier with respect to its weekly sickness and accident undertaking under the Insurance Plan. With respect to weekly sickness and accident coverage under the Insurance Plan for employees in California, GE was and is a self-insurer in form and in effect.

12. The plaintiff International Union as one of its proposals during national bargaining negotiations with defendant GE in each 1955, 1963, 1966 and 1969 requested the deletion of the language then present and still present in the General Electric Insurance Plan, at p. 18 of Exhibit C attached hereto, which then provided and still provides that benefits under the Weekly Sickness and Accident Insurance Plan will not be payable for any absence due to pregnancy or resulting childbirth or to complications in connection therewith. During each of said negotiations the plaintiff International Union requested the defendant GE to pay weekly sickness and accident benefits for a maximum of six weeks for absences due to pregnancy or resulting childbirth but defendant GE refused to agree to make any payment of weekly sickness and accident benefits for absences due to pregnancy or childbirth. Exhibit H-2 attached hereto is a correct copy of the proposals for changes in the General Electric Insurance Plan which the plaintiff International Union presented to defendant GE on August 26, 1969.

• • •

23. The Employee & Community Relations Instructions bearing the issue date 2/1/68, Instructions No. ER-2.31 and ER-2.32, copies of which are attached hereto marked Exhibit U-1 and U-2, were issued to management personnel by defendant GE at its Salem, Virginia plant on the date indicated. The Employee Handbook, GE, Industrial Control Department, Salem, Virginia, attached hereto marked Exhibit U-3 was mailed to all non-supervisory employees of the Salem plant in May or June 1970 and was distributed to all new non-supervisory employees hired during the rest of 1970 and 1971 during the orientation sessions conducted by the defendant GE for new employees. Copies of said Employee Handbook were distributed to all new nonsupervisory employees until the supply of the handbooks was exhausted. No record is available as to the exact date on which the supply was exhausted but it is believed to have been exhausted towards the end of 1971. No new handbook has been distributed to non-supervisory employees at any time since 1970. At no time since 1968 has the defendant GE issued any written notice or written instructions to non-supervisory employees at the Salem plant that the policy respecting mandatory leave stated in such Employee Handbook is no longer in effect.

• • •

25. The defendant GE at its Salem, Virginia plant at all times here material has followed the practice and at the present time does follow the practice of notifying each female who is about to go on leave for purposes of childbirth that she is to phone the plant six weeks after her child is born.

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28. Except as to plaintiff Doris Wiley, the defendant GE paid hospital bills for the childbirth or miscarriage of each of the individually named plaintiffs. As to those individually named plaintiffs represented by the plaintiff International and its affiliated IUE locals, such payments were made pursuant to the 1970 GE-IUE Pension and Insurance Agreement.

29. Exhibits PP, QQ, RR, SS, TT, UU, VV, and WW are true copies of the claims filed with the defendant GE by the plaintiffs Barbara C. Hall, Doris B. Wiley, Sharon E. Godfrey, Alberta B. Smith, Mary Williams, Johnnie E. Taylor, Martha V. Gilbert and Erma F. Thomas, respectively. The other employees listed below each filed a claim with the defendant GE for non-occupational sickness and accident benefits for all the period she was on pregnancy leave as shown in paragraph 41 herein, upon the form of claim supplied by GE, which was certified and signed by her personal physician and in which the question if the disability was caused by pregnancy was checked "yes" by her physician. Each of said claims was respectively denied by the defendant GE on the date listed opposite the employee's name. The sole ground stated for the denial in all cases was that the General Electric Insurance Plan provides that benefits under weekly sickness and accident insurance will not be payable for any absence due to pregnancy, resulting childbirth or to complications in connection therewith. In those instances in which the employees also processed a grievance to the Third Step, the National Docket Number of the grievance is stated and where a Third Step answer denying the grievance has been received the date of such denial is as stated.

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30. The plaintiff Brenda Christian applied to defendant GE at its Fort Wayne plant on July 17, 1972, for a form on which to apply for weekly sickness and accident benefits but defendant GE refused to give her a form. On July 19, 1972, Bob Wire, Business Agent of Local 901, IUE, wrote a letter to H. K. Reinking, Manager, Personnel Accounting and Banking, GE, Fort Wayne, complaining of the refusal of defendant GE to furnish the plaintiff Brenda Christian with a form, a copy of which letter is attached hereto marked Exhibit EE. Under Date of July 21, 1972, M. E. Hamilton, Manager Union Relations, GE, Fort Wayne, wrote the said Bob Wire a reply, a copy of which is attached hereto marked FF.

31. The plaintiff Emma Furch is employed at the Tyler, Texas plant of the defendant GE and has a seniority date of October 13, 1966. On April 5, 1972, she went on pregnancy leave and was hospitalized on April 7, 1972. On April 14, 1972, she delivered a stillborn baby. After returning home she was again hospitalized on April 21, 1972, due to a blood clot in the lung unrelated to her pregnancy or miscarriage. The plaintiff Emma M. Furch filed a claim with the defendant GE for weekly sickness and accident benefits, a copy of which is attached hereto as Exhibit XX. Her claim was returned attached to a letter dated June 6, 1972, signed by S. J. Przywara, a copy of which is attached hereto as Exhibit YY.

32. The defendant GE at all times here material has paid and is paying weekly sickness and accident benefits on the basis of each calendar day to that each day of entitlement is paid at the rate of 1/7 of the weekly rate. The defendant GE at all times here material has and is now using calendar days in determining the 8th day on which the benefits start when an employee is disabled for eight days without being confined in a hospital during these days.

33. The defendant GE has an established and uniform policy of paying weekly sickness and accident benefits to each employee on account of a qualifying sickness and accident for such period as the employee is authorized to be absent and for such extended period or periods as are certified by the employee's personal physician, except where the defendant GE by its own physician disputes the existence of a disability, limited, however, by the maximum period of 26 weeks for any one disability or sickness. On many occasions an employee who had received such payments for 26 weeks thereafter failed to return to work, either because of death, continuing disability, retirement, or, in relatively few cases, because of quitting. In the relatively few quitting cases where an employee does not return to work after receiving sickness and accident benefits, only where defendant GE has contended the amounts were fraudulently obtained, has the defendant GE attempted to recover any amounts so paid.

34. The claim for Weekly Sickness and Accident Benefits filed by the plaintiff Martha V. Gilbert was denied by a letter to J. O. Randall, Supervisor, General Electric Company, from N. E. Sarmiento, Assistant Supervisor, Group Health Claims, Metropolitan Life, dated December 17, 1971, a copy of which is attached hereto marked Exhibit GG. Copies of said letter were furnished to plaintiff Martha V. Gilbert and to plaintiff Local 161 on or about December 18, 1971. The claims of plaintiffs Alberta B. Smith, Johnnie Taylor and Doris B. Wiley for Weekly Sickness and Accident Benefits were each denied by a letter to J. O. Randall, Supervisor, General Electric Company from N. E. Sarmiento, Assistant Supervisor, Group Health Claims, Metropolitan Life, dated November 1, 1971, all of which were substantially similar with the aforesaid letter to plaintiff Martha V. Gilbert except for the name of the claimant. The claim of the plaintiff Barbara Hall for Weekly Sickness and Accident Benefits was denied by a letter to J. O. Randall, Supervisor, Group Health Claims, Metropolitan Life, dated November 1, 1971, a copy of which is attached hereto marked Exhibit HH. Copies of said letter were furnished to the plaintiff Barbara Hall and to plaintiff Local 161 on or about November 2, 1971.

35. The plaintiffs Martha V. Gilbert, Sharon E. Godfrey and Doris B. Wiley each filed a grievance challenging the denial of her claim for Weekly Sickness and Accident Benefits for the period she was disabled by pregnancy. In each instance the grievance was denied at the first and second step of the grievance machinery. The answer of the defendant GE at the first step of the grievance machinery was in each instance in the form of a statement written by a supervisor of GE on the bottom of the grievance form. The plaintiff Sharon E. Godfrey filed her grievance on December 8, 1971, and the answer written thereon by her supervsor state:

> "In accordance with the IUE-GE Pension and Insurance Agreement and page 18 of the Insurance Pension Booklet (ERB-32D) Weekly Disability Benefits are not payable for absence due to pregnancy or childbirth."

A copy of the grievance filed by the plaintiff Sharon E. Godfrey bearing thereon the denial by the defendant GE at the first step, is attached hereto marked Exhibit JJ. The grievances filed by the plaintiffs Martha V. Gilbert, Barbara Hall, Alberta B. Smith and Doris B. Wiley were each answered by the defendant GE at the first and second step in substantially the same words.

36. The grievances filed by the plaintiffs Sharon E. Godfrey, Barbara Hall, Alberta B. Smith and Doris B. Wiley were all sent to New York City for processing there at the third step in the grievance procedure in accordance with provisions of the IUE-GE National Agreement. These grievances were all presented to the defendant GE at the third step of the grievance procedure on May 25, 1972, and were all denied by the defendant GE by notification to the plaintiff IUE, entitled "Company Position, Roanoke, Virginia, L-161, meeting date May 25, 1972, New York," signed by B. Hindle, dated June 8, 1972, a copy of which is attached hereto marked Exhibit KK. The ground stated for the denial is as follows:

> "It is the Company position that the denial of sickness and accident benefits during a leave of absence for pregnancy is consistent with the terms of the Agreement negotiated between the Company and the Union and to which the Union is therefore a party."

37. In the instance of all claims filed by the individually named plaintiffs for weekly sickness and accident benefits and in the instances of all grievances filed by the individually named plaintiffs grieving the denial of their claims the defendant GE has never contested or admitted the fact that the grievant was disabled from work by pregnancy or childbirth, but has denied the claim and justified its rejection of the claim for Weekly Sickness and Accident Benefits solely on the ground that such benefits were not properly due when the absence was caused by pregnancy or childbirth.

38. The defendant GE has paid sickness and accident benefits for periods during which employees, whether male or female, are totally disabled because of

(a) sclerosis of the liver

(b) lung cancer

(c) emphysema

(d) injury incurred in auto accident

(e) injury incurred in sport activity of employee

(f) injury incurred in a fight

Also defendant GE has paid sickness and accident benefits for periods during which employees, whether male or female, are totally disabled because of the following causes (the number of total claims based on disabilities resulting from such causes is infinitesimal and claims for such disabilities rarely occur):

(g) following a program for the cure of alcoholism

(h) injury incurred in an attempted suicide

(i) drug addiction

(j) following a program for the cure of drug addiction

(k) sterilization

(l) elective surgical operations unrelated to pregnancy

(m) elective plastic surgery

(n) following a program of psychiatric treatment

39. The defendant GE has on occasion temporarily assigned to other suitable work an employee who is disabled temporarily from performing his or her regular job but is not disabled from performing other available work.

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41. Each of the employees whose name is listed below has the seniority date stated following her name, and except for plaintiff Furch was absent for pregnancy, miscarriage or childbirth from the date stated in the column headed Date Went on Pregnancy Leave until the date listed in the column headed Date Returned To Work, at the time of leaving work to go on pregnancy leave had the straight time weekly earnings stated and

gave birth to a baby or miscarried on the date indicated: . . . .

42. During August 1971 Robert Friedman, Assistant General Counsel of the plaintiff International Union, telephoned E. S. Willis, the Manager of Employee Benefits at the national level for the defendant GE, during said telephone conversation Robert Friedman called the attention of E. S. Willis to EEOC Decision No. 71-1474, CCH-EECC Decision Para. 6221, issued March 19, 1971.

Other stipulations entered into with respect to GE's statistical experience with maternity leaves will be included *infra*.

II. Findings of Fact

A. Medical Questions.

Much evidence has been adduced addressed to the question of the voluntariness of pregnancy. That issue is raised by virtue of G.E.'s assertion that the alleged voluntariness of pregnancy justifies, under Title VII, the treatment of that condition in the manner challenged. (See Conclusions of Law, *infra,* for discussion of legal issues).

Dr. Hellegers, an expert called by plaintiffs, stated that although specific methods of contraception present difficulties,[2] that nevertheless medically the majority of conceptions are planned or accepted. As Dr. Hellegers noted, the number of annual pregnancies, about 4.2 million[3] (about 1 million of which are terminated by abortions) is

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[2] Oral contraceptives have a failure rate of 1%, which means one pregnancy will result from each 100 years exposure use; interuterine devices have a 2-7% failure rate; diaphragms present a 2-40% failure rate, depending on economic strata. Though approximately 1 million abortions per year are performed, they are not always advisable.

[3] Defendants have offered a somewhat higher figure for births, 3.6 million, for women between the ages of 17 and 47 (DX42).

relatively low when compared to the number of women capable of bearing children. Statistics submitted by the defendants, DX42, show that for women between the ages of 17 and 42, the total female population is approximately 74.5 million and annual births approximate 3.7 million; for working women, of a total population of 18.5 million there are 1.6 million births.[4] (DX42). An inference to be drawn from these statistics is that many women are able to prevent pregnancy, indicating that the condition of pregnancy may to a large degree be controlled. Yet ultimately, these figures show only that most women, through one means or another, are successful in avoiding pregnancy. While this might constitute circumstantial evidence as to the intent of those who do become pregnant, it is at best attenuated. Current conduct is not always indicative of long range intent. Neither negligence nor accident are foreign to human and legal experience. As stated above, the evidence is that one quarter of pregnancies are aborted.

At best, what these figures show is that with proper care, forbearance, and precaution, pregnancy can to a large extent be avoided. But "voluntariness" in this sense is meaningless. This standard is not applied to informal athletic injuries, most of which could also be avoided by appropriate preparation, forbearance and circumspect precaution. The most that can be said with certainty is that some pregnancies, perhaps a majority, are voluntary; others are not.[4a]

The great mass of expert testimony presented here on the subject merely confirms what appears obvious to any layman: pregnancy is not a disease, as that term is commonly understood; it is, however, at times, physically disabling, and the Court so finds. These broad findings, however, are susceptible to detailed qualification, highly germane to the issues presented here. While the Court finds that all the medical testimony is essentially in accord, the testimony of Dr. Hellegers is especially enlightening.

[4] See Appendix "A".

[4a] The failure to abort cannot, in the Court's opinion, be considered a necessary indication of prior intent to conceive.

The term "disease" is, according to Dr. Hellegers, subject to varied definitions, depending on the approach used. Four definitions so offered may be summarized as follows:

1) Disease may be defined as a statistical deviation from the average. The difficulty with this definition lies in defining what is "average" or "normal."

2) Disease may be defined in terms of difficulty in ability to function. The weakness in this definition is defining "function" in a non-relative social or medical sense.

3) Disease may be defined as a condition, which if not corrected, may lead to disability or death. In this connection the medical term "morbidity" is applied, said term meaning a process of deterioration leading to death.

4) The World Health Organization (WHO) defines health as total physical, psychological and social well-being. By inference, disease is the converse, or lack of these factors.

Pregnancy, *per se,* does not come within the meaning of any of these, with the possible exception, for stated periods of time, of 1 and 2. Nevertheless, certain conditions incident to pregnancy come within the meaning of "disease." These conditions are commonly referred to as "complications" and many are disabling.

First, approximately ten percent of pregnant women will miscarry, the great majority of these during the first trimester of pregnancy. A miscarriage is physically disabling, although is most cases only for a few days.

Second, of the remaining complications which occur in about 10% of pregnancies, there are two general types.

The first type includes those complications which are brought on by weight gain. They may be found in any person who suffers from underlying diseases which become more serious as a result of obesity. Examples of this category are hypertension and diabetes. For example, a person who has underlying diabetes may not normally be affected or disabled by same but upon gaining a large amount of weight in a short time experiences thereafter disabling symptoms. Pregnancy involves this sort of rapid weight gain, but the complications of this type suffered by a pregnant woman are of the same nature as she would suffer had she gained the same amount of weight in the same period and were not pregnant. Irrespective of the cause, treatment is essentially the same for pregnant and nonpregnant persons. In nonpregnant people these disabilities are termed diseases; for the reasons set forth they may properly be termed diseases in pregnant people as well. These diseases comprise approximately half of the complications.

The remaining complications are solely related to the physiology of pregnancy, dealing with problems of the placenta, uterus, etc. Two common examples are detachment of the placenta and mislocation of the placenta. Special procedures used only for pregnant women are employed in treatment. The aforesaid category may be described as pregnancy-related diseases.[5] All these complications may prove disabling; about half actually require hospitalization.

Where complications are absent, which occur in 90% of pregnancies that do not miscarry, the actual period of disability under normal conditions is short. A pregnant

[5] Other diseases as toxemia, edema and others are of unknown origin. Dr. Hellegers speculated that they may come from hormonal problems associated with weight gain. One other disease which may be technically pregnancy-related is ectopic pregnancy. Once diagnosed, ectopic pregnancy requires immediate surgery.

woman becomes progressively more disabled in the limited situations where girth is of importance. As Dr. Hellegers noted, for example, a woman pilot may have increasing difficulty through pregnancy in fitting between the pilot's seat and the control wheel of an airplane. There is, however, no evidence before the Court as to certain job requirements at GE which involve potential problems because of girth, and the parties have stipulated that job reassignments are made to accommodate disabilities. (St. p. 39).

Absent complications, there is no medical reason for not allowing a woman to work to the day before delivery or for limiting her activities prior to delivery. See deposition of Dr. Wilbanks, defendant's expert, at p. 8. There is no controversy as to this general medical principle.

Similarly, all experts agree that labor and delivery are disabling. The medical rule of thumb is that six weeks are required for recuperation from delivery. That figure is standardly used because healing should be at a certain medically definable stage by that time. A physician with a large practice thus would instruct his or her patients to return at the six week date for examination; if healing has not by that time conformed to the medical norm, corrective treatment is often required. While the recuperative process may be completed within two or three weeks, it is usually more practical to require a woman to return after six weeks than to have her examined numerous times from the third week on to determine when healing has progressed. Numerous visits may be common, however, when a physician deems it important for a woman to return to work as quickly as possible for psychological or economic reasons. Interestingly, the evidence discloses that housewives who perform daily household chores may find themselves back at the rigorous demands of family raising within a week or so.

In summary, the Court makes the following findings:

1. While pregnancy is perhaps most often voluntary, a substantial incidence of negligent or accidental conception also occurs.

2. Pregnancy, *per se,* is not a disease.

3. A pregnancy without complications is normally disabling for a period of six to eight weeks, which time includes the period from labor and delivery, or slightly before, through several weeks of recuperation.

4. Ten percent of pregnancies are terminated by miscarriage, which is disabling.

5. Five percent of pregnancies are complicated by diseases which are found in nonpregnant persons but which may have been stimulated by pregnancy. Five percent of pregnancies are complicated by pregnancy-related disease. These complications are diseases which may lead to disability.

B. The G.E. Experience

Much of the evidence before the Court concerns projected costs for maternity coverage under S & A. Included in same is a statistical analysis of G.E.'s past experience with its S & A plan and maternity leaves.

Counsel have entered into stipulation in this regard, which stipulations, dated July 24, 1973, read in part as follows:

143. During 1970, GE's experience, by sex, with respect to claims under its weekly sickness and accident disability insurance coverage was as follows:

	Male	Female
No. of claims (new)	19,045	15,509
Average duration of claim	48 days	52 days
No. of new claims per thousand employees	77	173

	Male	Female
Average No. of employees covered	246,492	89,705
Total benefits paid	$11,279,110	$7,405,790
Average cost per insured employee of total benefits paid	$45.76	$82.57

144. During 1971, GE's experience, by sex, with respect to claims under its weekly sickness and accident disability insurance coverage was as follows:

	Male	Female
No. of claims (new)	22,987	17,719
Average duration of claim	47 days	52 days
No. of new claims per thousand employees	99	217
Average No. of employees covered	231,026	81,468
Total benefits paid	$14,343,000	$9,191,195
Average cost per insured employee of total benefits paid	$62.08	$112.91

145. [GE statistics with respect to pregnancy-related absences. See Appendix B]

146. [GE statistics with respect to absences for ectopic pregnancies. See Appendix C]

147. [GE statistics with regard to absences for abortions and miscarriages. See Appendix D]

148. . . .

149. S & A benefits for pregnancy absences during the period approximately 1939-1948 were paid only to employees in certain GE plants. Records relating to coverage in those years are incomplete, but it is believed that the following plants were covered by those provisions: [List of 17 plants omitted]

During that period of time there was no company-wide GE group disability insurance plan and different company components were privileged to adopt insurance coverage as desired.

Upon trial, GE introduced the testimony of Paul Jackson, an actuary. Based upon the aforecited statistics and other data, Mr. Jackson calculated that GE's S & A plan costs 170% more for females than males and he projected that maternity coverage would yield a 300-330% greater cost. These projections were based upon an average maternity leave duration of 13 weeks. The Court notes, however, that prior to late 1971 GE had a mandatory six month rule requiring pregnant employees to leave after the sixth month of pregnancy, at its Salem, Virginia plant. The evidence before the Court indicates that said policy was also national. See, *e.g.*, PX51. No indication was given as to what extent the six month rule affected these statistics. Based upon the 13 week average, Mr. Jackson estimated that nationwide S & A maternity benefits for all women working in the national labor force and covered by S & A insurance would be $804 million. (DX42). Addition of maternity benefits to long term disability plans as well would cost an additional $1.35 billion, according to Mr. Jackson.

Mr. Jackson further testified that an inherent difficulty in writing S & A insurance generally is that, contrary to actuarial principles, the condition which gives rise to the insurance claim may not be beyond the control of the insured. Under S & A programs such as GE's, where benefits are paid for sickness leaves whether voluntary or not, costs tend to be high because of voluntary elements. Within this context, Mr. Jackson asserted that pregnancy leaves, which may be voluntary both in respect to the fact and duration of absence, cause insufferable actuarial problems.[6]

[6] GE pays S & A benefits for other voluntary sickness absences, see stipulated findings of fact, but according to Mr. Thomas Hilbert, GE's Labor Relations Counsel, these cases are minimal.

Although under the terms of GE's S & A plan a doctor's certificate is required to prove medical disability, Mr. Jackson stated that doctors might be willing to give said certificates to women who wish to malinger. Accordingly, he urged that claim abuse might be high. The medical evidence before the Court, however, is that pregnant women would not, *per se,* be inclined to malinger more than other persons and, indeed, might have more difficulty in sustaining a fabricated complaint by virtue of the ease of examination by a doctor of the usual pregnancy related complaints.

Mr. Jackson also testified that about 50% of women who leave work for reasons of pregnancy do not return, although at G.E. the figure is lower, about 40%, according to other testimony of G.E. officials. In this regard, the Court notes that G.E.'s policy is to terminate a woman who does not return to work within eight weeks after delivery unless she asks for an extension of time. Interrogatory No. 67.

The thrust of this evidence is that S & A pregnancy benefits will inordinately increase the costs of the S & A plan. While the Court for the reasons heretofore stated has doubts about the exact figures projected and about some of the statistical assumptions,[7] it does find that maternity S & A benefits will increase G.E.'s S & A costs by an amount which, though large, is at this time undeterminable.

It is because of these increased costs that G.E. has refused to grant maternity benefits. This is readily apparent from the reasons for G.E.'s policy as outlined by Mr.

[7] Evidence presented by Katherine East, Secretary to the presidential Citizen's Advisory Council on the Status of Women, suggests that S & A maternity costs may not be significantly more costly. See PX81, 121, cost estimates of the Aetna Insurance and Casualty Co. Also, according to Mrs. East, several companies, including Xerox, IBM and others, provide maternity benefits of varying types, but cost figures for same are not yet available.

Thomas Hilbert, G.E.'s Labor Relations Counsel. Those reasons may be summarized as follows:

1. The plan covers disabilities from sickness and accidents, of which pregnancy is neither.

2. The plan follows standard insurance practice, which still excludes pregnancy benefits.

3. Inclusion of pregnancy benefits in S & A is not a rational use of money, particularly as said inclusion may increase pregnancies and may be subject to claim abuse.

4. Pregnancy is completely voluntary.

5. Women utilize S & A more frequently than men under the present program and inclusion of pregnancy benefits would increase this unbalance.

6. Forty percent of G.E.s women employees who take maternity leave do not return. Accordingly, S & A maternity benefits would in a great number of cases be the equivalent of giving women termination pay benefits not available to nonpregnant employees.

7. If women received S & A pregnancy benefits, men would demand benefits for absence taken for child care.

Several of the aforementioned assertions are factually erroneous. For example, under the S & A plan men could not demand child care absence benefits without proving their work absence resulted from medical disability. The termination pay problem exists with *all* workers who do not return to work following sickness or accident. All the reasons proffered have to do with dollars and cents.

C. Socio-Economic Factors

Both sides have introduced numerous studies and testimony of a socio-economic nature. For example, Katherine East Secretary to the Citizens Council on the Status of Women, a presidentially appointed study group, testified that the Council determined that policies of the sort chal-

lenged here are discriminatory. G.E. asserts in a similar vein that provision of S & A benefits for pregnancy will encourage births, and that said encouragement is contrary to a national policy of limited population growth.[8] Much of this testimony is self-serving, conclusory or irrelevant.

The question before the Court is a narrow one of statutory interpretation and the Court gives no weight, except as specifically noted, to these broad social concerns, which are more appropriate for legislative consideration.

Some of the statistical studies introduced, however, contradict or supplement G.E.'s cost projection analysis. While the Court, for reasons previously stated, finds the various cost statistics to be of too speculative a nature to be probative of actual future costs, the general trends and weight of those figures is relevant. For purposes of the record, the Court has included in appendices E, F, and G certain statistics relevant to these matters.

Good Faith.

G.E. has sought to prove that its present legal position on the S & A maternity benefits question was arrived at by virtue of good faith reliance on EECC pronouncements. While the legal efficacy of this argument will be considered *infra,* the Court's findings of fact with respect to same follow.

The Court notes that one of the early points of controversy in this litigation was the posture of the union in pressing for the change in maternity policy and the exact

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[8] In this respect, Mr. Hilbert, G.E.'s Labor Relations Council, introduced the results of a highly amusing, and dated, G.E. experiment in public relations. Exactly nine months prior to G.E.'s 75th Anniversary on October 15, 1953, the company announced that it would give five shares of stock to any employee who had a child born on the anniversary date. Preliminary estimates were that 15-20 awards would be given. The actual total turned out to be 189.

relationship of nonparty unions to contract negotiations. G.E. had initially sought to counterclaim against the IUE for indemnity or contribution and to implead the nonparty unions in order to gain contribution or indemnity for any losses that might be suffered by the company as a result of this action. See the Court's memorandum of April 30, 1973, — F. Supp. — . These issues have been rendered moot, however, by G.E.'s recent agreement at the 1973 contract negotiations talks to indemnify the unions for any losses that might be suffered by virtue of this suit. PX103. Accordingly, G.E. voluntarily withdrew its claim in this regard against the unions. See Notice of Dismissal filed June 18, 1973.[9] Detailed findings with respect to the union's position as represented by the labor steering committee, [see the Court's memorandum of May 16, 1973,] are therefore unneccessary here. For these purposes, however, the Court finds that the unions made initial demands for modification of the S & A pregnancy provisions at the contract talks of 1950, 1955, 1963, 1966 and 1969. See also, Stip. 12. These demands were never acceded to. Further, on February 24, 1972, the Union wrote to G.E. formally requesting a policy change (PX58, 104, 110).

Plaintiffs have introduced much evidence in an effort to demonstrate that G.E.'s past history is dominated by a strain of male chauvinism. The Court deems that line of inquiry legally irrelevant and makes no findings with respect to this contention.

The proper starting point is 1964, the year Title VII was enacted. According to Thomas Hilbert, G.E.'s Labor Relations Counsel, G.E. made a unilateral review of its contract practices in 1965 to ensure that they were in compliance with the Civil Rights Act of 1964. Counsel for G.E. questioned at that time whether the S & A policy might be

[9] The parties have agreed that the contract provisions on S & A maternity benefits will be re-negotiated to conform to the outcome of this litigation. PX112.

violative of Title VII, but it was tentatively concluded that the S & A maternity policy was not. Mr. Hilbert stated that he found support for this conclusion in several opinion letters of 1966 issued by EECC's General Counsel. (DX12) (Discussion in Conclusions of Law, *infra*). An EECC decision of March 1971, see paragraph 6221, CCH Employment Practices (discussion *infra*) indicated a possible shift in EEOC policy which was confirmed by the guidelines of April, 1972, *infra*. G.E. itself did not request the opinion of counsel for the EEOCC with respect to its S & A policy.

The Court finds that prior to the April, 1972 guidelines, G.E. made no affirmative effort to determine if its policy was in compliance, even assuming arguendo that through March, 1971, it may have had a valid reason for taking the position it did. Subsequent to the April, 1972, guidelines, G.E. made the conscious decision not to comply with the EEOC guidelines and to defend this decision in court. See, *e.g.*, affidavit of Robert Friedman, Assistant General Counsel for the Union, January 2, 1973.

The Court's conclusions of law with respect to these actions are set forth, *infra*.

III. Conclusions of Law

A. Declaratory Judgment; Legality of GE's S & A Policy

On March 3, 1972, the EEOC issued a guideline which provides that:

> Disabilities caused or contributed to by pregnancy, miscarriage, abortion, childbirth and recovery therefrom are, for all job-related purposes, temporary disabilities and should be treated as such under any health or temporary disability insurance or sick leave plan available in connection with employment. Sec. 1604.10(b). 37 Fed. Reg. 6837 (April 5, 1972).

On May 18, 1973, the EEOC issued a decision in *Gilbert* v. *General Electric,* N.Y. D.C. 3-093 (PX2B), which deci-

sion represented the culmination of an investigation commenced upon the filing of their respective EECC charges by the present named plaintiffs, see memorandum of the Court under date of February 6, 1973. Said decision concluded that the GE S & A plan is violative of Title VII.

The law is well-settled that the decisions or interpretations of agencies entrusted with the enforcement of a federal statute, while not binding on a federal court, are nevertheless entitled to "great deference," *Griggs* v. *Duke Power Co.* 420 F.2d 1225, 1234 (4th Cir. 1970), 401 U.S. 424, 433-34 (1971), except under limited circumstances, *e.g.*, where legislative history indicates a contrary result, *Griggs, supra,* an agency decision may be disregarded. Pursuant to these principles; in the absence of evidence to the contrary as in the instant case, the Court must afford the EEOC decision and guidelines the appropriate weight as mandated by law. Accordingly, the Court is satisfied that the burden is on GE, as the party challenging the administration's position, to overcome the presumption that its S & A policy is violative of the Act, and this they have failed to do. Indeed the task is an impossible one, for the Court is satisfied that the EEOC's construction, as enunciated in the guideline, is in accord with the will of Congress as expressed in the Act and its legislative history. It is to be kept in mind that the true issue is whether the defendant's policies are violative of Title VII.

G.E.'s contention that because of the voluntary nature of pregnancy they are insulated from the obligation to pay disability benefits to female employees absent from work due to pregnancy-related disabilities loses much viability in light of its policy of providing disability benefits to its male employees for *all* disability, including cosmetic surgery, disabilities arising from attempted suicides, etc.

While pregnancy is unique to women, parenthood is common to both sexes, yet under G.E.'s policy, it is only their female employees who must, if they wish to avoid a

total loss of company induced income, forego the right and privilege of this natural state. See *Hanson, et al* v. *Hutt* (Supreme Court of Washington, Dec. 20, 1973). Indeed, under G.E.'s policy the consequence of a female employee exercising her innate right to bear a child may well result in economic disaster, as in the case of at least one of the witnesses who appeared before the Court.[10] No such consequences would befall a male employee who chose to subject himself to a selective operation, such as a vasectomy or cosmetic surgery. Thus, women are required to undergo the economic hardship of the disability which arises from their participation in the procreative experience. The disability is undisputed and inextricably sex-linked. To isolate such a disability for less favorable treatment in a scheme purportedly designed to relieve the economic burden of physical incapacity is discrimination by sex. That such is discriminatory by reason of sex is self evident. G.E.'s contention that the voluntary nature of pregnancy justifies, under Title VII, its treatment of that condition as challenged, must fail. While it is true that women may, under certain conditions, resort to an abortion, see *Roe* v. *Wade,* 410 U.S. 113 (1973), it cannot be reasonably argued that Congress in its enactment of Title VII ever intended that an intended beneficiary of that Act forego a fundamental right, such as a woman's right to bear children, as a condition precedent to the enjoyment of the benefits of employment free of discrimination.

The question of voluntariness is not really the issue. The fact is that the defendant's policy penalizes plaintiffs and members of their class for being women and suffering

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[10] This G.E. employee, who became unintentionally pregnant, worked until five weeks before the birth of her child. Being precluded from disability benefits, and without other funds, she resorted to Welfare Aid, but prior to receiving same, suffered the cessation of electric and gas service for her home, along with its attendant deprivations including loss of heat and inability to adequately provide for her family.

disabilities to which they alone are inherently susceptible, and this is discriminatory. See *Buckley* v. *Coyle Public School System,* 476 F.2d 92 (10th Cir. 1973).

B. Cost

While as counsel for plaintiff has pointed out, the defendant has not formally pleaded business necessity as a defense to this action, evidence of costs was introduced, and the Court deems it in the interest of a full disclosure of its reasoning leading to the conclusion reached to briefly comment upon that aspect of the case.

Primary, of course, is the principle that business necessity constitutes a valid defense only to a situation where the alleged discrimination arises from a policy neutral on its face, and in its intent. The instant case does not fall in this category. Additionally, it is doubtful in the first instance if cost alone would constitute a proper defense. See *Robinson* v. *Lorillard Corporation,* 444 F.2d 791, 799 f.n.8 (4th Cir. 1971). The business necessity rationale is premised on a policy of justification by virtue of a showing that the suspect conduct is necessary to the safe and efficient operation of the business. *Jones* v. *Lee Way Motor Freight,* 431 F. 2d 245 (10th Cir. 1970). As one court has expressed it, "Necessity connotes an irresistible demand." *United States* v. *Bethlehem Steel Corp.,* 446 F. 2d 562 (2d Cir. 1971). No such situation exists here.

The cost of S & A benefits incurred by the defendant arises by virtue of its contractual obligations, and as expressed by Judge Sobeloff in *Robinson* v. *Lorillard, supra,* at 799, "The rights assured by Title VII are not rights which can be bargained away—either by a union, by an employer, or by both acting in concert."

In the instant case, the Company chose to negotiate a contract which they knew would result in certain benefits to their employees and deliberately chose to preclude

benefits to employees who became pregnant. They cannot now justify such discrimination by simply contending that the cost would be high. In addition, it is obvious that the cost, if prohibitive or destructive of defendant's business, may be reduced in any number of alternative ways, as suggested in the briefs. Simply stated, there is no evidence before the Court to render viable a defense of business necessity.

The Court's finding of a lack of a viable defense of business necessity is not to say that the Court doesn't recognize that at the core of any suit alleging discriminatory "compensation, terms, conditions or privileges of employment" are dollars and cents. This, obviously, is central to any such action. The relevant argument, however, goes not to increase in company costs, but to non-discrimination in distribution of amounts paid.

The present plan is objectionable in that it excludes from coverage a unique disability which affects only members of the female sex, while no suggestion is made to exclude disabilities which can be said to affect only males. Additionally, the Court gives no weight to the suggestion that the actuarial value of the coverage now provided is equalized as between men and women. Defenses must be bottomed on evidence, and such, in this regard, is lacking here.

Whatever inferences may be suggested by the statistical data presented, the Court simply cannot presume to draw any precise conclusions as to the actuarial value of the coverage provided under the present plan, or the effect of including pregnancy related disabilities on the basis of that limited data.

While it may, as the Court has already indicated, be theoretically argued that the adding of benefits for disabilities to which only women are subject, and which as a consequence increases their compensation, represents a

discriminatory practice against men, such an argument must fail for the lack of evidentiary support. The obvious fact that the risk of pregnancy creates an actuarial risk of disability for women not present for men and which would cost more is simply not enough. Such an argument would require a showing of similar actuarial calculations regarding other disabilities having an exclusive (*e.g.*, vasectomy) or higher (*e.g.* perhaps heart attacks or hair transplants) incidence in men and that discounts for the greater company expenditure to cover such risks had been factored into the calculus prior to the decision to analyze the disparate effects of pregnancy disability benefits. Simply stated it would have to be shown that absent pregnancy disability provisions, the effects of the balance of defendant's disability program were in fact equalized. Merely showing, as G.E. has, that in two previous years the coverage given women's per capita disabilities has cost somewhat more is insufficient especially in light of the myriad of factors which might have and undoubtedly did contribute to such a result. Indeed, the concern of defendants in reference to pregnancy risks, coupled with the apparent lack of concern regarding the balancing of other statistically sex-linked disabilities, buttresses the Court's conclusion that the discriminatory attitude characterized elsewhere in the Court's findings was in fact a motivating factor in its policy. Even had factual evidence been introduced in support of the heretofore discussed theory, a different legal result than the one here reached would not, in the Court's view, have been dictated.

Provision of a marginally greater economic benefit to women, if such it is, in the form of pregnancy disability benefits within an otherwise all inclusive disability program, cannot reasonably be considered more favored treatment. If it be viewed as a greater economic benefit to women, then this is a simple recognition of women's biologically more burdensome place in the scheme of human existence. An industrial policy which does not account for

this fails in providing such sexual equality as is within its power to produce. If Title VII intends to sexually equalize employment opportunity, there must be this one exception to the cost differential defense.

Inherent disabilities deriving from pregnancy susceptibility are thus different from other congenital disabilities. Practically speaking, pregnancy is peculiar in that not only is procreation a necessary element of human existence, but it is one which is virtually taken for granted despite the unequal social taxes it imposes. Legally, sexual discrimination is among those expressly limited concerns of Title VII. It is not clear that this single exception to a differential compensation defense is not within the Congressional intent which Title VII embodies.

C. Good Faith

Section 713(b)(1) provides in part:

> In any action or proceeding based on any alleged unlawful employment practice, no person shall be subject to any liability or punishment for or on account of (1) the commission by such person of an unlawful employment practice if he *pleads* and *proves* that the *act* or omission complained of *was in good faith, in conformity with, and in reliance* on any written interpretation or *opinion* of the Commission. 42 U.S.C. § 2000e-12(b). (Emphasis supplied)

As the Court has previously noted, G.E. in 1965 made a unilateral review of its contract practices with reference to the Civil Rights Act of 1964.

Defendant argues that its conclusion in 1965 that its pregnancy exclusion did not violate Title XII was well founded by virtue of publication in certain of the labor services, namely Commerce Clearing House Employment Practices, of an opinion letter by the EEOC General Counsel issued pursuant to 29 C.F.R. 1601.30, *infra*. This letter, dated October 17, 1966, if directed to G.E. would undoubt-

edly have given rise to the invoking on its behalf of the good faith defense proclaimed in Section 713(b)(1) heretofore quoted. The weakness of defendant's argument lies in several factors, not the least of which is that the Court is not satisfied that General Electric relied upon the cited letter, or other similar opinion letters referred to in the evidence.

Contemporaneous with the effective date of Title VII, July 1, 1965, the EEOC caused to be published in the Federal Register (30 Fed. Reg. 8407) the following procedural regulation:

> Only (a) a letter entitled "opinion letter" and signed by the General Counsel on behalf of the Commission or (b) matter published and so designated in the Federal Register may be considered a "written interpretation or opinion of the Commission" within the meaning of section 713 of Title VII. 29 C.F.R. Section 1601.30 (1970).

In this Circuit an asserted defense of good faith as contemplated by Section 713(b) of the Act, *supra,* premised upon a specific finding by the EEOC that there was no reasonable cause to believe that the Act had been violated and upon which decision the employer contended it relied in retaining a departmental seniority system found by the Court to be discriminatory, was rejected. In commenting on such asserted defense, the Court in referring to the Section 713(b) immunity said:

> [16] Under The Commission's regulations EEOC reasonable cause determinations are not interpretations which may be relied upon to establish the § 713(b) immunity:
>
> > only (a) a letter entitled "opinion letter" and signed by the General Counsel on behalf of the Commission or (b) matter published and so designated in the Federal Register may be considered a "written interpretation or opinion of the Commission" within the meaning of section 713 of Title VII.

> 29 C.F.R. § 1601.30. This regulation has been upheld as a reasonable interpretation of the statute in Local 189, United Papermakers & Paperworkers, AFL-CIO, CLC v. United States, *supra* 416 F.2d at 997. And the Supreme Court has specifically held that EEOC interpretations are entitled to the "great deference" normally accorded interpretations of the agency charged with administering a statute. Griggs v. Duke Power Co., 401 U.S. at 433-435, 91 S.Ct. at 854-856.
>
> Moreover, the EEOC interpretation of § 713(b) is an eminently reasonable one. It simply insures that the only Commission interpretations and opinions which will be given binding effect under that section are those based either upon a solid factual foundation or upon the most thorough consideration of the potential factual situations to which the rule might apply. For, as Judge Gewin notes in Beverly v. Lone Star Lead Const. Co., *supra* 437 F.2d at 1141,
>
> > [t]he Commission is neither required nor physically able to conduct an "in depth" investigation in every case; apparently the investigative procedure, in the instant case was performed on an ex parte basis, bereft of all of the advantages which come from an adversary proceeding in a court of law.
>
> Thus, the regulation gives conclusive effect only to General Counsel opinion letters based on stated factual assumptions, and official interpretive regulations which have received the Commission's most careful consideration.
>
> We hold that a "no reasonable cause" determination is not a "written interpretation or opinion of the Commission" within the meaning of § 713(b).

See, *Robinson* v. *Lorillard Corp., supra,* at 801. See also, *Local 189, United Papermakers and Paperworkers, supra,* 416 F.2d 980, 997 (5th Cir. 1969).

Here the evidence, as heretofore noted, discloses no effort by the Company to secure an opinion from the EEOC. Additionally, in May, 1971, the defendant through its coun-

sel, was aware of the fact that prior thereto the EEOC had, in a decision issued March 19, 1971 (EEOC Decision No. 71-1474, CCH-EEOC Sec. P-6321), specifically held that a pre-1969 plan providing for a maximum of thirteen weeks of sickness and accident benefits for temporary disabilities but which excluded those arising out of childbirth or complications of pregnancy violated Title VII. Compounding that knowledge was a specific reference by counsel for the Union to the Manager of Employee Benefits for the defendant, in August of 1971, to the fact that the EEOC had so ruled.

In light of these circumstances, defendant's present contention is self-contradictory. It seems elementary that a defense of good faith presupposes a disposition to exercise it. Notwithstanding the specific knowledge of the EEOC's ruling, and formal requests by the Union for renegotiation of the then existing contract, defendant's position as to the instant issue remained constant. The Court is satisfied that whatever reasoning guided the defendant's conduct, it was not premised on any EEOC decisions.

D. Maternity Leave

The maternity leave policy of the Company while presumably national in principle seems not to have been evenly applied as evidenced by the Court's findings, *supra*. In certain instances it appears that the pregnant employee was required to take leave of her position three months prior to birth and not permitted to return until six weeks after the birth. In other instances the periods varied. Regardless of the periods involved, the evidence is clear that under the defendant's bargaining agreement and insurance plan, weekly disability benefits are not payable for absence due to pregnancy or childbirth. In short, of all the employees it is only pregnant women who have been required to cease work regardless of their desire and physical ability to work and only they have been required to remain

off their job for an arbitrary period after the birth of their child. In February, 1973, the defendant issued a directive which permits pregnant employees to continue working, if they are able, as long as they wish, subject to medical approval.

IV. Conclusion

The claim here is not of disparate treatment resulting from sex stereotyping, a claim now familiar in Title VII litigation. See, *e.g.*, *Sprogis* v. *United Air Lines, Inc.*, 444 F.2d 1194 (7th Cir. 1970). Rather, it is a claim of disparate treatment of persons, otherwise similarly situated, on the basis of a particular condition, the peculiarity of which is both irrelevant to the purpose of the company program and ineluctably sex linked.

There is no rational distinction to be drawn between pregnancy related disabilities and a disability arising from any other cause. The defendant does not exclude from coverage any disability because it was voluntarily incurred other than disabilities arising from childbirth or other pregnancy-related conditions. That this is sex discrimination is self evident. See Judge Winter's comments in his dissent in *Cohen* v. *Chesterfield County School Board*, 474 F.2d 395, 400, 401 (4th Cir. 1973), *rev'd.* U.S. (1973) (42 L.W. 4186, Jan. 21, 1974). See also, Chief Judge Brown's dissent in *Phillips* v. *Martin-Marietta Corp.*, 416 F.2d 1257, 1257 (5th Cir. 1969), cited by Judge Winter in *Cohen, supra.* wherein he, in discussing the unwillingness of an employer who was willing to hire men with pre-school age children for a certain position but not women in a case premised on Title VII of the Civil Rights Act of 1964, said:

> The distinguishing factor seems to be motherhood versus fatherhood. The question then arises: Is this sex related? To the simple query the answer is just as simple: Nobody—and this includes Judges, Solomonic or life tenured—has yet see a male mother. A mother, to oversimplify the simplest biology, must then be a woman.

See also, dissenting opinion of Judge Wisdom in *Schattman v. Texas Employment Commission*, 459 F.2d 32, 42 (5th Cir. 1972), wherein he said, "Female employees are the only employees . . . . who become pregnant; it follows that they are provisionally dismissed from work on account of sex . . . ."

The conduct of the defendant in engaging in discriminatory practices against the plaintiffs has been deliberate and intentional, and the plaintiffs are entitled to the relief sought.

An appropriate order shall issue.

/s/ ROBERT R. MERHIGE, JR.
Robert R. Merhige, Jr.
United States District Judge

Date: Apr. 13, 1974

APPENDIX A
(DX 42)

Estimated Annual Births Working Population 1972

Central Age	Birth Rate per 1,000 Population [1]	Total Female Population 1971 [2]	Annual Births (2) × (3)	Married Females Husband Present [2]	Married Female Workers Husband Present [2]	Estimated Annual Births Among Female Workers (4) × (6) + (5)
(1)	(2)	(3)	(4)	(5)	(6)	(7)
17	66	7,547,000	498,102	866,000	320,000	184,056
22	167	8,754,000	1,461,918	4,842,000	2,276,000	687,180
27	140	7,051,000	987,140	5,466,000	2,102,000	379,614
32	75	5,903,000	442,725	4,831,000	2,004,000	183,652
37	36	5,325,000 [3]	209,700	4,771,000 [3]	2,270,000 [3]	99,773
42	10	5,825,000 [3]	58,250	4,771,000 [3]	2,269,000 [3]	27,703
47	1	6,089,000 [3]	6,089	4,735,000 [3]	2,317,000 [3]	2,980
Total		74,580,000	3,663,924	45,443,000	18,530,000	1,564,988

[1] Table 56 Statistical Abstract (Table 65, American Almanac)
[2] Table B Special Labor Force Report 144, Bureau of Labor Statistics, U.S. Department of Labor.
[3] Data available only for two central age groups as follows: Col. (3) 11,650 for 35-44, 12,177 for 45-54 and Col. (5) 9,541 for 35-44 and 9,470 for 45-54, Col. (6) 4,539 for 35-44 and 4,634 for 45-54.

Married Women (Husband Present) in Labor Force March 1972 = 19,249 (Table 7, p. 36, Mo. Labor Rev., April 1973).

Discount for Lower Birth Rate Working Mothers .9.

Estimated Annual Births $1{,}564{,}953 \times \frac{19{,}249}{18{,}530} \times .9 = \underline{1{,}463{,}113.}$

July 17, 1973

APPENDIX B

G.E. employment statistics with respect to childbirth (excluding data concerning ectopic pregnancies, caesarian births, abortions and miscarriages) disclose that the duration of pregnancy absences prior to the date of delivery for employees at all GE plants and locations is as follows:

Weeks duration of Pregnancy Absence	1970	Cumulative Percent	1971	Cumulative Percent
Under 1 Week	86		68	
1 week but less than 2	46		52	
2 weeks but less than 3	63		61	
3 weeks but less than 4	76		74	
4 weeks but less than *5*	124	12%	106	15%
5 weeks but less than 6	153		91	
6 weeks but less than 7	195		146	
7 weeks but less than *8*	211	29	167	31
8 weeks but less than 9	277		206	
9 weeks but less than *10*	246	45	185	47
10 weeks but less than 11	231		162	
11 weeks but less than *12*	229	59	165	60
12 weeks but less than 13	275		210	
13 weeks but less than 14	184		153	
14 weeks but less than *15*	134	78	102	79
15 weeks but less than 16	117		93	
16 weeks but less than 17	84		58	
17 weeks but less than 18	62		51	
18 weeks but less thas 19	52		42	
19 weeks but less than *20*	47	89	36	90
20 weeks but less than 21	46		25	
21 weeks but less than 22	42		32	
22 weeks but less than 23	41		23	
23 weeks but less than 24	37		16	
24 weeks but less than 25	14		16	
25 weeks but less than 26	25		20	
26 weeks but less than 27	23		19	
27 weeks but less than 28	27		19	
28 weeks but less than 29	23		15	
29 weeks but less than 30	14		13	
30 weeks but less than 31	16		10	
31 weeks but less than 32	12		17	
32 weeks but less than 33	16		9	
33 weeks and over	33	100%	14	100%
Total	3,261		2,476	

APPENDIX C

GE employment statistics with respect to ectopic pregnancies and caesarian births disclose that the duration of pregnancy absences prior to the date of delivery for employees at all GE plants and locations is as follows:

	1970	1971
Under 1 week	10	5
1 Week but less than 2	1	3
2 weeks but less than 3	6	3
3 weeks but less than 4	3	—
4 weeks but less than 5	4	3
5 weeks but less than 6	7	3
6 weeks but less than 7	9	9
7 weeks but less than 8	5	11
8 weeks but less than 9	16	14
9 weeks but less than 10	9	10
10 weeks but less than 11	9	10
11 weeks but less than 12	6	7
12 weeks but less than 13	6	5
13 weeks but less than 14	6	4
14 weeks but less than 15	13	10
15 weeks but less than 16	5	6
16 weeks but less than 17	6	3
17 weeks but less than 18	1	2
18 weeks but less than 19	1	3
19 weeks but less than 20	3	2
20 weeks but less than 21	1	1
21 weeks but less than 22	1	1
22 weeks but less than 23	1	1
23 weeks but less than 24	1	1
Over 24 weeks	10	8
Total	140	125

APPENDIX D

GE employment statistics with respect to abortions and miscarriages disclose that the duration of pregnancy absences prior to the date of delivery for employees at all GE plants and locations is as follows:

	1970	1971
Under 1 week	83	123
1 week but less than 2	16	7
2 weeks but less than 3	8	10
3 weeks but less than 4	4	5
4 weeks but less than 5	6	5
5 weeks but less than 6	5	3
6 weeks but less than 7	1	3
7 weeks but less than 8	5	4
8 weeks but less than 9	6	5
9 weeks but less than 10	2	2
10 weeks but less than 11	2	2
11 weeks but less than 12	1	4
12 weeks but less than 13	1	1
13 weeks but less than 14	1	1
14 weeks but less than 15	—	—
15 weeks but less than 16	—	2
16 weeks but less than 17	—	1
17 weeks but less than 18	2	—
18 weeks but less than 19	—	1
19 weeks but less than 20	1	1
20 weeks but less than 21	1	—
21 weeks but less than 22	—	—
22 weeks but less than 23	1	—
23 weeks but less than 24	1	—
	147	180

Table 2.—Mothers in the Labor Force, by Marital Status and Age of Children, March 1972-71

(Mothers 16 years of age and over)

APPENDIX E
(PX 73)

Marital status and age of children	Number		Percent distribution		As percent of women in population	
	1972	1971	1972	1971	1972	1971
Mothers with children under 18 years	12,682,000	12,201,000	100.0	100.0	42.9	42.2
Married, husband present	10,452,000	10,098,000	82.4	82.7	40.5	39.7
Other women ever married [1]	2,230,000	2,103,000	17.6	17.2	59.1	59.9
Mothers with children 6 to 17 years only	8,244,000	7,874,000	65.0	64.5	52.6	52.0
Married, husband present	6,706,000	6,424,000	52.9	52.7	50.2	49.4
Other women ever married [1]	1,538,000	1,450,000	12.1	11.9	66.5	67.6
Mothers with children under 6 years [1]	4,438,000	4,327,000	35.0	35.5	31.9	31.4
Married, husband present	3,746,000	3,674,000	29.5	30.1	30.1	29.6
Other women ever married [1]	692,000	653,000	5.5	5.4	47.4	47.8
Mothers with children 3 to 5 (none under 3) [2]	1,950,000	2,025,000	15.4	16.6	38.7	38.4
Married, husband present	1,580,000	1,680,000	12.5	13.8	36.1	36.1
Other women ever married [1]	370,000	345,000	2.9	2.8	55.8	56.4
Mothers with children under 3 years [2]	2,488,000	2,302,000	19.6	18.9	28.1	27.1
Married, husband present	2,166,000	1,994,000	17.1	16.3	26.9	25.7
Other women ever married [1]	322,000	308,000	2.5	2.5	40.4	40.8

[1] Widowed, divorced, or separated.

[2] May also have older children.

Source: U.S. Department of Labor, Bureau of Labor Statistics: Summary—Special Labor Force Report, October 1972, Marital and Family Characteristics of Workers, March 1972, and Special Labor Force Reports.

APPENDIX F

(P. Ex. 74)

Table 3.—Labor Force Status of Ever-Married Women, by Presence and Age of Children, March 1972

Race and presence and age of children	Population	Labor force	
		Number	As percent of women in population
Women of all races			
Total	61,896,000	25,462,000	41.1
Mothers with children under 18 years	29,577,000	12,682,000	42.9
With children 6 to 17 years only	15,677,000	8,244,000	52.6
With children under 6 years [1]	13,900,000	4,438,000	31.9
With no children under 3 years [1]	5,038,000	1,950,000	38.7
With children under 3 years [1]	8,862,000	2,488,000	28.1
Women without children under 18 years	32,319,000	12,780,000	39.5
Women of Minority Races			
Total	6,590,000	3,256,000	49.4
Mothers with children under 18 years	3,439,000	1,842,000	53.6
With children 6 to 17 years only	1,754,000	1,037,000	59.1
With children under 6 years [1]	1,685,000	805,000	47.8
Women without children under 18 years	3,151,000	1,414,000	44.9

[1] May also have older children.

Source: U.S. Department of Labor, Bureau of Labor Statistics: Summary—Special Labor Force Report October 1972, Marital and Family Characteristics of Workers, March 1972.

APPENDIX G

(P. Ex. 75)

Table 4.—Labor Force Participation Rates and Percent Distribution of Mothers (Husband Present), by Income of Husband in 1971 and Ages of Children, March 1972

Income of husband	Labor force participation rates of mothers with children			Percent distribution of mothers in the labor force with children		
	Under 18 years	6-17 years only	Under 6 years [1]	Under 18 years	6-17 years only	Under 6 years [1]
Number	—	—	—	10,452,000	6,706,000	3,746,000
Percent	40.5	50.2	30.1	100.0	100.0	100.0
Under $3,000	41.8	51.0	34.1	5.7	5.1	6.7
$3,000 to $4,999	45.1	53.0	39.0	9.9	8.0	13.4
$5,000 to $6,999	46.5	57.3	37.7	15.3	13.2	18.9
$7,000 to $9,999	44.1	56.3	32.8	29.1	27.9	31.3
$10,000 and over	35.5	45.1	22.4	40.0	45.7	29.6

[1] May also have older children.

Source: U. S. Department of Labor, Bureau of Labor Statistics: Summary—Special Labor Force Report, October 1972, Marital and Family Characteristics of Workers, March 1972.

APPENDIX C

(Captioned Omitted in Printing)

Order

(Filed April 13, 1974)

For the reasons stated in the memorandum of the Court this day filed, and deeming it proper so to do, it is ADJUDGED and ORDERED as follows:

1. The failure of the defendant, General Electric Company, to pay sickness and accident benefits to the individually named class representative plaintiffs and the members of their class for periods of absence due to childbirth or other pregnancy-related disabilities, violates Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e.

2. The defendant, its agents, servants, employees, and all acting in concert therewith, be, and they are hereby enjoined and restrained from continuing its policy of discriminating against members of the class represented herein, in its failure to pay to said members weekly disability benefits for absences from work due to pregnancy-related disabilities in the same manner as afforded male employees for disabilities embodied in its sickness and accident policies and practices presently in effect.

3. Monetary judgments will be entered in favor of those members of the class affected in such amounts as the Court ultimately concludes is proper.

4. All other matters are continued until the further order of the Court.

5. Counsel are requested to meet with the Court at 9:00 o'clock a.m. on April 19, 1974, for discussion reference those matters still outstanding.

Let the Clerk send copies of the memorandum and this order to all counsel of record.

/s/ ROBERT R. MERHIGE, JR.
Robert R. Merhige, Jr.
United States District Judge

Date: Apr. 13, 1974

APPENDIX D

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
WASHINGTON DISTRICT OFFICE
1717 H STREET, N.W.
WASHINGTON, D.C. 20006

Case No. YDC3-093

Charge No. TDC2-0745; TDC3-1188
TDC3-1189; TDC2-1459
TDC2-0868; TDC2-1140
TDC2-1143

May 18, 1973

Martha Gilbert
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Doris B. Wiley
2623 Florida Ave., N.W.
Roanoke, Virginia 24017

and

Mary R. Williams
Route 8, Box 481, Lot 15
Roanoke, Virginia 24014 — *Charging Parties*

vs.

General Electric Company
1501 Roanoke Boulevard
Salem, Virginia 24153 — *Respondent*

DETERMINATION

The Commission has completed the investigation of the subject charge. Having considered the entire record and pursuant to Section 1601/9(b) of the Commission's Procedural Rules, I issue the following determination as to the merits of the charge.

Respondent is an employer within the meaning of Title VII and the timeliness and all other jurisdictional requirements have been met.

Charging Parties allege that Respondent discriminated against them because of their sex, female, by failing to provide insurance coverage for time lost due to disability from pregnancy and childbirth equal in amount to benefits provided for other disabilities.

Respondent states that no discriminatory action was contemplated or occurred.

Respondent's insurance plan manual indicates that benefits under the Weekly Sickness and Accident Insurance will not be payable for any absence due to pregnancy or resulting childbirth or to complications in connection therewith. The plan further provides that all employees who become totally disabled as a result of a non-occupational sickness or accident, will be paid weekly based on an amount equal to sixty percent of their normal straight-time weekly earnings up to a maximum weekly benefit of $150.

Where a policy has an exclusive impact upon women based solely on a condition attendant to their sex, it is illegal under Title VII, except upon a showing that the policy is reasonably necessary to normal operation of that particular business. Respondent has not sustained its burden under this exception. Moreover, the Commission has held that disabilities caused or contributed to by pregnancy are for all job-related purposes temporary disabilities and should be treated as such under any health plan or temporary disability insurance plan available in connection with employment. Accordingly, we conclude that Respondent's plan discriminates against Charging Parties and females as a class because of their sex within the meaning of Section 703(a) of Title VII.

Having determined that there is reasonable cause to believe that Respondent has engaged in unlawful employment practices, the Commision now invites the parties to join with it in a collective effort toward a just resolution of this matter. We enclose an information sheet entitled "Notice of Conciliation Process" for the attention of each party. A representative of this office will be in contact with each party in the near future to begin the conciliation process.

On behalf of the Commission:

/s/ GWENDOLYN M. WELLS
Gwendolyn M. Wells
District Director
Washington District Office

APPENDIX E

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA, RICHMOND DIVISION

MARTHA V. GILBERT, *et al*

v.

GENERAL ELECTRIC COMPANY

Civil Action No. 142-72-R

Order

(Filed May 9, 1974)

Pursuant to the motion of the defendant, General Electrict Company, and deeming it proper so to do, it is ADJUDGED and ORDERED that the enforcement of Paragraph 2 of this Court's order filed April 13, 1974, be, and the same is hereby, stayed until the United States Court of Appeals for the Fourth Circuit has ruled on the appeal now pending herein, upon the following terms: That defendant shall comply with such further procedures as this Court may determine appropriate during the pendency of the appeal aforementioned to the end that notice be given to all members of the class affected herein, stating the holding of the Court, the rights of the plaintiffs thereunder, and the procedure to be followed for implementation, as well as such other pertinent information as the Court may deem proper, it being the Court's intention to take all necessary steps to expedite the Court's order short of requiring any payments by the defendant, until all appeals have been exhausted.

Let the Clerk send copies of this order to all counsel of record.

/s/ ROBERT R. MERHIGE, JR.
Robert R. Mehige, Jr.
United States District Judge

Date: May 9, 1974